IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. [redacted] 18

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-AFL-CIO,

Petitioner,

vs.

RUSSELL SCOFIELD, LAWRENCE HANSEN, EMIL STEFANIC, GEORGE KOZBIEL, and THE NATIONAL LABOR RELATIONS BOARD,

Respondents.

BRIEF OF INDIVIDUAL RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondents, RUSSELL SCOFIELD, LAWRENCE HANSEN, EMIL STEFANIC and GEORGE KOZBIEL hereby oppose the application of Petitioner for a writ of certiorari to review a final order of the United States Court of Appeals for the Seventh Circuit which denied Petitioner leave to intervene in proceedings to review an order of the National Labor Relations Board.

QUESTIONS PRESENTED

1. Is the issuance of a writ of certiorari an appropriate or proper procedure to review an order of a Court of Appeals which denied the Petitioner leave to intervene as a party in a proceeding pending in the Court of Appeals?

2. Should a writ of certiorari be issued to review the order of the Court of Appeals which denied the Petitioner leave to intervene in a proceeding for judicial review of an order of the National Labor Relations Board?

STATEMENT

The statement of the case in the petition herein contains two significant misstatements. It is alleged that the case originated from unfair labor practice charges brought against the Petitioner, UAW-AFL-CIO. This is incorrect. The original charges were brought against Local 283, UAW-AFL-CIO. The complaint of the National Labor Relations Board based upon such charges alleged the commission of unfair labor practices by the local union only. There was no charge or complaint against the Petitioner here. The caption of the amended consolidated complaint which formed the basis for the proceedings before the NLRB is set forth in the Appendix hereto.

The Petitioner refers to its intervention motion in the Court of Appeals as having the consent of all parties. This is not strictly correct. Counsel for the individual employees consented to the participation of the union as *amicus curiae* but opposed the intervention of the union as a party. Counsel for the union communicated this information to the Court of Appeals by letter dated

October 1, 1964, a copy of which is set forth in the Appendix hereto.

REASONS FOR DENYING THE WRIT

1. The Petitioner is Not a Party Entitled to Apply for the Writ.

Under 28 U.S.C. 1254(1) only a "party" to the case may apply for a writ of certiorari. The Petitioner here is clearly not such a party. In fact, the refusal of the Court of Appeals to permit the Petitioner to become a party to the case is precisely the basis for the present petition seeking review.

The argument of the Petitioner is self-contradictory. The principal reason advanced by the Petitioner for its claimed right to intervene in the Court of Appeals is the alleged necessity for the Petitioner to become such a party in order to have the right to petition this Court for a writ of certiorari after the Court of Appeals decides the merits of the proceeding before it. If, as the Petitioner argues, it must become a party to the proceedings in the Court of Appeals in order to have the right to petition this Court for a writ of certiorari, the Petitioner obviously has no right to seek such a writ when its attempted intervention is denied.

In the alternative, the Petitioner seeks "common-law certiorari" under 28 U.S.C. 1651. It is clear that this statutory provision is reserved for the most extraordinary cases. The petition here utterly fails to meet the standards of Rule 30 of the Rules of this Court providing "The issuance by the Court of any writ authorized by 28 U.S.C.A., Section 1651(a) is not a matter of right but of sound discretion sparingly exercised".

2. The Petitioner Has No Interest in the Proceedings Below.

The International Union, which is the Petitioner here, was not the respondent before the NLRB. The complaint of the Board was directed solely against the local union. Thus even if the Court of Appeals were to reverse the order of the NLRB dismissing the complaint against the local union, no order, relief or remedy would be imposed against the Petitioner International Union. It is the height of intermeddling for the International Union, which was not even a respondent before the NLRB, to claim the right to intervene in proceedings to review the order of the NLRB, and further to claim that its demand for intervention rises to the dignity of a constitutional right.

3. There is No Basis for Reversing the Exercise of Discretion by the Court of Appeals.

The National Labor Relations Act provides no authority for the right of intervention claimed by the Petitioner here. Under Section 10(f) of the Act when an aggrieved party petitions for review of an order of the Board, no provision is made for participation by the party which prevailed before the Board. It is the Board itself which assumes the obligation of defending its order. This mode of procedure is perfectly appropriate. As this Court observed in the case of *National Licorice Company v. National Labor Relations Board,* 309 U.S. 350, 362-363:

> "The proceeding authorized to be taken by the Board under the National Labor Relations Act is not for the adjudication of private rights. . . . In a proceeding so narrowly restricted to the protection and enforcement of public rights, there is little scope or need for the traditional rules governing the joinder of parties in litigation determining private rights."

The claim of infringement of due process of law is without foundation. The numerous cases cited by the Petitioner in support of this argument are so remote factually as to be of no assistance here.

The NLRB as the respondent in the proceedings in the Court of Appeals will adequately represent the interest which the Petitioner seeks to defend. The participation of the Petitioner in support of the position of the Board would be merely cumulative.

The sequence of events envisioned by the Petitioner is the reversal of the Board order by the Court of Appeals, the entry by the Board of a new order pursuant to the mandate of the Court, and a subsequent petition by the union to review the new Board order. No showing has been made why this procedure will not adequately protect the rights of the union and why the union must be admitted at this earlier stage of the proceeding.

The alleged conflict in the decisions of the various Courts of Appeals stems from the compilation of cases by the Petitioner rather than from any direct comment by the Courts. Not one of the cases cited by the Petitioner as permitting intervention contains any discussion of the intervention question. The most that can be said is that the Petitioner has found a number of cases in which intervening parties apparently participated. This evidence merely demonstrates that in those particular cases the respective Courts exercised their discretion in favor of permitting intervention. Certainly the cases fail to establish any policy one way or the other in any of the Courts of Appeals. The Petitioner concedes that even the Seventh Circuit has sometimes permitted intervention and sometimes denied it.

By way of contrast, there are at least five decisions by Courts of Appeals specifically considering the question of the right to intervention in proceedings for review of NLRB orders. Each of the decisions denies any right to intervene on behalf of the party prevailing before the NLRB. Moreover, these decisions are not limited to the First and Seventh Circuits as argued by the Petitioner. *Aluminum Ore Co. v. N.L.R.B.*, 131 Fed. 2d 485 (C.A. 7); *Stewart Die Casting Corp. v. N.L.R.B.*, 132 Fed. 2d 801 (C.A. 7); *Haleston Drug Stores v. N.L.R.B.*, 190 Fed. 2d 1022 (C.A. 9); *Amalgamated Meat Cutters v. N.L.R.B.*, 267 Fed. 2d 169 (C.A. 1); *N.L.R.B. v. Florida Citrus Canners Cooperative*, 288 Fed. 2d 630 (C.A. 5).

Those Circuit Courts which have expressly commented upon the intervention question deny any right of intervention. In certain cases the various Courts of Appeals in the exercise of their discretion have permitted intervention. The Petitioner has cited no reported decision in which any Court of Appeals has considered the issue and found an absolute right of intervention in proceedings of this nature.

CONCLUSION

The petition concedes that this Court has considered and denied similar petitions in the past. No sufficient reason appears for this Court to depart from its past rulings in this regard. The petition should be denied.

Respectfully submitted,

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Attorneys for the
Individual Respondents

APPENDIX

Caption of Amended Consolidated Complaint

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION

LOCAL 283, UNITED AUTOMOBILE, AIRCRAFT
AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, UAW-AFL-CIO
(WISCONSIN MOTOR CORPORATION)

and

Case No. 13-CB-1059-1
13-CB-1059-2
13-CB-1059-3
13-CB-1059-4

RUSSELL SCOFIELD, an individual
LAWRENCE HANSEN, an individual
EMIL STEFANEC, an individual
GEORGE KOZBIEL, an individual

Letter Stating Position of Parties With Respect to Motion to Intervene

October 1, 1964

Mr. Kenneth J. Carrick
Clerk of the United States Court
of Appeals for the Seventh Circuit
1212 North Lake Shore Drive
Chicago, Illinois 60610

Re. Scofield, et al., v. N.L.R.B. No. 14698

Dear Mr. Carrick:

We wish to advise the Court that after the filing of the Petition To Intervene With Consent Of All Parties, Mr. John G. Kamps, counsel for Russell Scofield et al., petitioners in this case, advised us that at the time he gave his oral consent to the petition he had thought that the proposed intervention would be limited to that of an amicus curiae. Mr. Kamps' position, as stated to us, is that he does oppose our intervention in the proceeding as a party, and we are delivering this letter by hand so that there will be no possible misunderstanding of his position by the Court.

Counsel for the National Labor Relations Board, respondent in this case, has advised us that the Board consents to our petition for intervention as a party.

Very truly yours,

KATZ & FRIEDMAN

Harold A. Katz